

**DECLARATION AND POWER OF ATTORNEY**  
(Continuation-In-Part Application)

As below named inventors, we declare that:

1. The information given herein is true, and we believe that we are the original, first and joint inventors of the invention entitled:

**ACTIVE AGENT TRANSPORT SYSTEMS**

which is described and claimed in:

the attached specification or

☒ the specification in application  
Serial No. 08/939,939,  
Filed: September 29, 1997  
(for declaration not accompanying application);

2. This application in part discloses and claims new subject matter as well as subject matter disclosed in my earlier-filed application(s)

Serial No. 08/763,183  
Filed: December 10, 1996  
For: Active Agent Transport Systems

3. I acknowledge my duty to disclose information of which I am aware which is material to patentability in accordance with 37 C.F.R. §1.56, including such material information which occurred between the filing date of said earlier application and the filing date of this application.

4. I have reviewed and understand the contents of the specification, including the claims, as amended by any amendment specifically referred to herein.

5. As to the subject matter of this application which is common to said earlier application, I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof or patented or described in any printed publication in any country before my or our invention thereof, or more than one year prior to said earlier application or in public use or on sale in the United States of America more than one year prior to said earlier application; said common subject matter has not been patented or made the subject of an inventor's certificate issued before the date of said earlier application in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to said earlier application.

As to the subject matter of this application which is common to said earlier application, I hereby claim the priority benefits under 35 U.S.C. 119, 120, or 365 of any application(s) for patent or inventor's certificate listed below. All applications for patent or inventor's certificate on this invention filed by me or my legal representatives or assigns prior to the application(s) of which priority is claimed as to the common subject matter are also identified below.

**PRIOR APPLICATION(S), IF ANY, OF WHICH PRIORITY IS CLAIMED**

<u>COUNTRY</u>	<u>APPLICATION NO.</u>	<u>DATE OF FILING</u>
U.S.	08/328,932, now U.S. Patent 5,714,167	October 25, 1994
U.S.	08/051,019, now U.S. Patent 5,451,410	April 22, 1993
U.S.	08/168,776, now U.S. Patent 5,447,728	December 16, 1993
PCT	PCT/US94/04560	April 22, 1994
U.S.	08/231,622, now U.S. Patent 5,629,020	April 22, 1994
U.S.	08/205,511	March 2, 1994
U.S.	08/231,623, now U.S. Patent 5,541,155	April 22, 1994
U.S.	08/315,200, now U.S. Patent 5,693,338	September 29, 1994
U.S.	08/316,404	September 30, 1994
U.S.	08/820,694	March 18, 1997

**ALL FOREIGN APPLICATIONS, IF ANY, FILED PRIOR  
TO THE APPLICATION(S) OF WHICH PRIORITY IS CLAIMED**

<u>COUNTRY</u>	<u>APPLICATION NO.</u>	<u>DATE OF FILING</u>
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6. As to the new subject matter of the present application which is not common to said earlier application I do not know and do not believe that the same was ever known or used in the United States of America before my or our invention thereof or patented or described in a printed publication in any country before my or our invention thereof or more than one year prior to the date of this application, or in public use or on sale in the United States of America more than one year prior to the date of the present application, and said matter has not been patented or made the subject of an inventor's certificate in any country foreign to the United States of America on an application filed by me or my legal representatives or assigns more than twelve months prior to the date of this application. As to the new subject matter of the present application which is not common to said earlier application, I hereby claim the priority benefits under 35 U.S.C. 119 of any application(s) for patent or inventor's certificate listed below. All applications for patent or inventor's certificate on this invention filed by me or my legal representatives or assigns prior to the application(s) of which priority is claimed for the new subject matter are also identified below.

**PRIOR APPLICATION(S), IF ANY, OF WHICH PRIORITY IS CLAIMED**

<u>COUNTRY</u>	<u>APPLICATION NO.</u>	<u>DATE OF FILING</u>
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**ALL FOREIGN APPLICATIONS, IF ANY, FILED PRIOR  
TO THE APPLICATION(S) OF WHICH PRIORITY IS CLAIMED**

<u>COUNTRY</u>	<u>APPLICATION NO.</u>	<u>DATE OF FILING</u>
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**POWER OF ATTORNEY:**

As a named inventor, I hereby appoint the following attorney(s) and/or agent(s) to prosecute this application and transact all business in the Patent and Trademark office connected therewith: Gordon D. Caplain #19,165, William F. Dodson, Jr. #20,569, Michael J. Sweedler #19,937, S. Peter Ludwig #25,351, Paul Fields #20,298, Harold E. Wurst #22,183, Joseph B. Lerch #28,936, Melvin C. Garner #28,272, Ethan Horwitz #27,546, Beverly B. Goodwin #28,417, Adda C. Gogoris #28,714, Martin E. Goldstein #20,869, Bert J. Lawan #19,407, Henry Sternburg #22,408, Robert A. Green #28,301, Peter C. Schachter #31,662, Robert Schaffler #31,194, David R. Franciscani #25,159, Robert C. Sullivan, Jr. #30,499, Ira J. Levy #35,587, Joseph R. Robinson #33,448

all of the firm of DARBY & DARBY P.C., 805 Third Avenue, New York, NY 10022

and Loretta A. Miraglia, #34,680, of Emisphere Technologies, Inc.

**SEND CORRESPONDENCE TO:**

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New York, NY 10022

**DIRECT TELEPHONE CALLS TO:**

Joseph R. Robinson  
212-527-7700

**IDENTIFICATION OF INVENTOR 1**

LAST NAME: MILSTEIN FIRST NAME: Sam MIDDLE NAME: J.  
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**IDENTIFICATION OF INVENTOR 2**

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**IDENTIFICATION OF INVENTOR 3**

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CITY: Carmel STATE OR FOREIGN COUNTRY: New York COUNTRY OF CITIZENSHIP: U.S.A.  
POST OFFICE ADDRESS: 64 Gail Court CITY: Carmel STATE OR COUNTRY: NY ZIP CODE: 10512

IDENTIFICATION OF INVENTOR 4

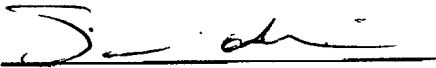
LAST NAME: LEIPOLD FIRST NAME: Harry MIDDLE NAME:

CITY: Elmsford STATE OR FOREIGN COUNTRY: New York COUNTRY OF CITIZENSHIP: U.S.A.

POST OFFICE ADDRESS: 63 Town Green Drive CITY: Elmsford STATE OR COUNTRY: NY ZIP CODE: 10523

I further declare that all statements made herein of my own knowledge are true and that all statements made on information and belief are believed to be true; and further that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any patent issuing thereon.

SIGNATURE OF INVENTOR 1:

  
SAM J. MILSTEIN

DATED:

4-20-98

SIGNATURE OF INVENTOR 2:

  
ANDREA LEONE-BAY

DATED:

4-16-98

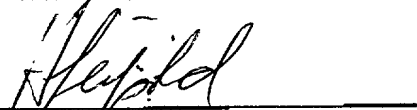
SIGNATURE OF INVENTOR 3:

  
DONALD J. SARUBBI

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4/16/98 DS  
5/16/98

SIGNATURE OF INVENTOR 4:

  
HARRY LEIPOLD

DATED:

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5/16/98

(D&amp;DForms/PTO-22)

REV. 12/87-5/89

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\*\* TOTAL PAGE.06 \*\*